In the

SUPREME COURT OF THE UNITED STATES

No. 79-440

L. SHYRL BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

the LAW

L. SHYRL BROWN
490 North First West
Richfield, Utah 84701
Petitioner, Pro Se

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III

In the

SUPREME COURT OF THE UNITED STATES

_____

No. _____

_____

L. SHYRL BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

_____

PETITION FOR WRIT OF CERTIORARI OR OTHER WRIT AS PLEASES THE COURT TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

_____

Petitioner respectfully requests that a Writ of Certiorari or other writ as pleases the Court issue to review the decision of the U.S. Court of Appeals for the Tenth Circuit filed April 12, 1979. Petitioner petitions for Law and Justice, for Redress of Grievances, and for equal protection and application of the law.

DECISION

For some strange reason the Internal Revenue Service wants to throw the Petitioner, L. Shyrl Brown, into prison for **objecting to questions** *on IRS Form 1040. Objections were based on constitutional grounds (4th and 5th Amendments), but I have done nothing other than* **object to questions.**

Since I know that this Court will not review this case, I petition the Court merely to prove that there is no place or no one a citizen of the United States can petition and have his rights protected. I do not pretend to argue all the unlawful abuses I have suffered by the actions of government agents and will raise just nine points of some two dozen which should be appealed. The Lord requires that I ". . . importune at the feet of the judge." (Doctrine and Covenants 101:86)

On April 12, 1979, the U.S. Court of Appeals for the Tenth Circuit affirmed the lower verdict. On July 18, 1979, the Tenth Circuit denied a motion for Judgment at Law of issues not decided in the original decision, denied a motion for rehearing, and denied a motion for Petition for Redress of Grievances. A motion for rehearing based on **Brown v. Texas** *(infra) dated August 2, 1979 was denied August 7, 1979.*

A Motion for Stay of Mandate pending application to the Supreme Court for Writ of Certiorari or other writ was filed July 21, 1979. A notice of intention to petition the Supreme Court in this matter was filed July 21, 1979. All filings were timely.

JURISDICTION

This Court has jurisdiction under Title 28, USC Section 1254(1) and under the U.S. Constitution Art. III, Sec. 2, Cl. 2.

Petitioner asserts here and below the deprivation of rights secured by the Constitution of the United States and jurisdiction. Petitioner petitions the Court for Writ of Certiorari or other writ as pleases the Court, petitions the Court for Law and Justice, and petitions the Court for Redress of Grievances.

QUESTIONS PRESENTED

Does IRS and the courts have jurisdiction over me under 26 USC 7203?

Is it a crime to **object to questions** *by a government agency?*

Can the government use threat of imprisonment to search and seize me and/or my papers and effects unreasonably?

Can I be compelled to yield up information which may be used against me in a criminal and/or other prosecutions?

Can I be deprived of liberty and property without due process of law?

Can I be prosecuted without being informed of the nature and cause of the charges?

Can I be prosecuted without compulsory process for obtaining witnesses?

Can I be prosecuted without assistance of counsel for my defense?

Can I be prosecuted without assistance of counsel for my defense?

Can I be prosecuted in violation of speedy trial?

Can I be denied my right to appeal?

Can I be denied equal protection and equal application of the law?

Others unmentioned.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Art. I, Sec. 2, Cl. 3; Art. I, Sec. 8, Cl. 1; Art. I, Sec. 9, Cl. 4; Art. IV, Sec. 2, Cl. 1; 4th Amendment, 5th Amendment, and 6th Amendment.

STATEMENT OF THE CASE

L. Shyrl Brown, Defendant, Appellant, Petitioner, was charged by **criminal** *misdemeanor information in the U.S. District Court for the District of Utah,* **Judge Willis Ritter,** *presiding, with three counts of Wilful Failure to File Income Tax Returns under* **Civil Code** *26 USC 7203 for the years 1971, 1972, and 1973 on 6/2/76 and was arrested after midnight 6/5/76 in his home. At arraignment 8/16/76, the court entered a plea of not guilty to all counts. The case was called to trial 7/5/77 after a year's delay; 326 or more of the days of delay were the responsibility of the government. Sentence of one year in prison for each count to run concurrently was imposed 8/5/77.*

STATEMENT OF FACTS

When the case was called to trial after some 326 days of government delay, I had been unable to retain a lawyer who could and would assist in the defense because of the antics of Judge Ritter and because this was a tax case. Many do not want to be a party to the complicity. Judge Ritter forced Attorney Phil Hansen to defend the case and compelled the case to trial with 15 minutes preparation. Rather strange, after 326 days of government delay. Absence of preparation time resulted in conviction and loss of a host of constitutional rights. The trial court refused to hear the case with due process and the Tenth Circuit sustained Judge Ritter because of prejudice and an inadequate record. The Tenth Circuit had the audacity not only to rule that 15 minutes was adequate preparation time, but that the defense had **all night** *to prepare. Even*

this ridiculous demand was of no value to me because Hansen was never available at night or any other time to prepare any defense.

If this Court denies this petition, it will destroy assistance of counsel in the Tenth Circuit as this case is used as precedent.

The case has never been to the jury because the defense was neither perfected nor even developed. Most of the questions raised in this petition result from Judge Ritter's denial of my right to assistance of counsel by preventing the court-appointed counsel time to prepare.

I could not participate because Hansen told me to clear everything with him before I said or did anything. I did not know how to participate in a trial, prepare a defense, subpoena witnesses, raise constitutional rights issues during a trial, make objections or any of the other things required of a good defense. This robbed me of my right to appeal because the record is inadequate.

I cited case law well over 150 times in my appeal brief and discovered it is an exercise in futility. I use four citations here because the court will refuse to recognize them anyway, regardless of truth. Further, this case is ridiculous under any reasonable standard of justice.

REASONS FOR GRANTING THE WRIT

POINT I

I was without the assistance of counsel during all phases of the trial. (6th Amendment).

Due process of law in this case turns upon assistance of counsel. Judge Willis Ritter appointed counsel but prevented due process by compelling the case to trial within about 15 minutes of the appointment. (See transcript at p. 18). The entire preparation for trial was a **partial** *review of* **Garner v. U.S.** *Assistance of counsel is an unalienable right which has been destroyed by the prosecution and the courts. If this court fails to reverse the Tenth Circuit, this case will be used as precedent in the Tenth Circuit to deny assistance of counsel and due process as evidenced by the number of times the Tenth Circuit relied upon their own decisions when the Supreme Court denied certiorari. (See the Tenth Circuit decision). It is your duty guarantee assistance of counsel, and I respectfully demand that right.*

POINT II

The Government is without JURISDICTION under Title 26 USC. (5th Amendment)

First, I cannot be charged **criminally** *under a* **civil** *title in the U.S. Code. Title 26 is not part of the criminal code nor is "Failure to File*

Income Tax Returns" a violation of the criminal code. Failure to file is a problem of collection of an alleged tax not a criminal offense.

Second, I can find no JURISDICTION under 26 USC 7203 or any other section for any constitutional tax which had not been satisfied. I know of no alleged direct tax which is apportioned due or owing or which requires me to file. I know of no duty or impost which would require me to file. None of these taxes have been complained or charged. There may be some problem with an excise. The federal and state governments both grant me a special privilege to prescribe controlled substances. To the best of my knowledge and belief, I have filed all the necessary forms and paid all the tax required to both the state and the federal government for this special privilege. I have no other special privilege. Again I ask, what kind of alleged tax places me under the JURISDICTION Title 26 USC? Please, IRS, let me in on your secret. The federal government does not have taxing power other than that mentioned and none of these apply. Where is JURISDICTION???

IRS refuses to answer my Petition for Redress of Grievances which the First Amendment prohibits. Of course, we have long known that IRS obeys laws and the Constitution only when it is convenient and disregards them whenever they wish.

I plead affirmatively ABSENCE OF JURISDICTION in this matter and petition this Court for Redress of Grievances. I have not yet found out the nature and cause of the charges against me because there is no constitutional basis for the charges. Will this Court allow IRS to throw me into jail with silence???

The charges are either a fraud under color of law and the Constitution, or I was tried unlawfully and without notice under international law without my permission, knowledge or consent. Either way, the charges and the trial are unlawful and unconstitutional.

I know you will not review this case nor dare you ask about JURISDICTION. Simple identification of the alleged tax under Title 26 would immediately reveal the fraud in these charges.

POINT III

OBJECTING TO QUESTIONS by a government agency **cannot possibly be a crime** *in the United States of America.*

Can you believe that those idiots in the IRS and the U.S. Attorney's Office wanted to throw me into prison for three years and fine me $30,000 for SIMPLY OBJECTING TO QUESTIONS by a government agency??? It is true that the agency is IRS, and it is true that the objections were based upon constitutional rights, but does this make me a **criminal???**

Let us return to sanity, gentlemen!

IRS Agent Harrington told me in my office **twice** *that I did not have*

to answer any questions and that I was constitutionally protected in not answering questions. (See transcript p. 123 - 125). Now, Harrington wants to throw me into jail for a long time for **objecting to questions.** *Do lawyers and IRS have license to freely substitute antonyms? Do words automatically have an opposite meaning in court than in common usage? The government agent and the Constitution tell me I don't have to answer questions and then make me a criminal for* **not answering questions.** *How absurd can things get???*

We live in an IRS despotic dictatorship. Who is going to protect your children and grandchildren from the tyrants?

When I am released from this insane charge, I believe I will find IRS Agent Harrington. I will sneak up behind him and shout, "BOOO!!!" Then see how long they can send me up the river because of **that** *criminal offense. That would make as much sense as the present charges, and certainly the government could get a conviction in the Tenth Circuit. There are really only two ways I can describe this case. Idiocy under intellectual despotism and fraud under color of law.*

POINT IV

The government cannot search and seize me nor my papers and effects unreasonably. (4th Amendment)

Neither the Tenth Circuit nor the trial court ever heard or ruled on this point. The Supreme Court's rejection will assure the death of the Fourth Amendment.

Unquestionably, IRS Form 1040 is an attempted general warrantless search of papers and effects personally and privately held by me. Such searches have always been unlawful. See **Marshall v. Barlow's, Inc.,** *No. 76-1143 (1978) and* **Zurcher v. Stanford Daily,** *No. 76-1484 (1978). Oops, I almost forgot that equal protection of the law does not apply to tax cases like mine.*

There is a large body of law explaining that searches must be by search warrant to be reasonable. IRS Form 1040 is not a search warrant and does not qualify as reasonable.

I note that the Supreme Court recently reversed a conviction of a man who refused to give his name to law enforcement officers because of privacy and the Fourth Amendment. **Brown v. Texas,** *No. 77-6673, decided June 25, 1979. I gave IRS my name and address. I merely* **objected to questions** *about my personal papers and effects, personally and privately allegedly held by me. They are clearly protected by the Fourth Amendment. IRS agents, acting on their own, are unlawfully going far, far beyond the unlawful acts of the police in* **Brown v. Texas,** *supra., in their invasion of my privacy.*

The record suggests an understandable desire to assert a police presence. How-

ever, that purpose does not negate Fourth Amendment guarantees. **Brown v. Texas, supra.**

I respectfully demand equal protection and equal application of the law.

Brown v. Texas, *supra., raises a second issue under the Fourth Amendment. The issue is the balancing test of "... the gravity of the public concerns . . . and the severity of the interference with individual liberty."*

What is the alleged public interest in the attempted search and seizure of my personal papers and effect? The only possible alleged (and unstated) public interest is to lay and collect an alleged tax. The Court will notice this point since charges were brought under Title 26, U.S. Code. However, the Court is advised by the transcript at page 102 - 116 that the IRS testified in the trial THAT THEY ALREADY HAD THE INFORMATION AND HAD COMPUTED AN ALLEGED BUT UNIDENTIFIED TAX.

Where was any injury? The government has never claimed any injury. Injury is an essential element in any crime. Where is the public interest which would justify a search and seizure? Why would IRS want to throw me into prison for **simply objecting to questions,** *the answers to which they already have according to their own testimony (obtained incidentally under* **direct examination** *by the U.S. Attorney.)*

Why do they want to compel information from me? That question is easily answered under Point V below.

The IRS instructs thousands of U.S. citizens each year that not answering questions or not giving information may result in civil penalties. This shows that either this case is a fraud because no crime has been committed, or IRS is lying to millions of people each year in direct violation of the Privacy Act. This is because citizens may be charged criminally for failing to give information. Why does IRS refuse to answer this point?

I respectfully demand my constitutional right to privacy.

POINT V

I do not have to give information to the government when that information may be used against me in some criminal action.

The Tenth Circuit seems to be alone in rejecting Fifth Amendment privilege.

Why would IRS want to compel information from me which they say I do not have to give them and which they already have? (See Point IV above). The answer is simple, I am a marked man. I have been critical of IRS activities. I have been a political candidate campaigning against the extreme abuses of our citizens by IRS. They

must "get" me. They want information over my signature that they can twist and use to prosecute me for fraud, tax evasion, or some other fanciful offense(s). My experiences in this case have taught me that IRS and the Justice Department can twist any information into a criminal conviction. I will not risk a felony or other criminal charge.

If the government had anything in mind besides some other criminal prosecutions, why did they refuse to grant immunity from prosecution? The issue was raised in court. Bad, bad faith by IRS.

This Court, the IRS, and the U.S. Attorney are all hereby advised that I do not have to give information which may lead to criminal prosecutions. I will not give you information you may use against me. I am constitutionally protected, and all parties know it. This right is guaranteed and absolute. I have claimed this constitutional privilege in good faith as best I know how. Now, if you want to throw me into prison for doing something which is guaranteed to me as a citizen of the United States, you just go to it. You have the big stick!

> *"***Only the witness knows** *whether the apparently innocent disclosures sought may incriminate him, and the burden appropriately lies with him to make a timely assertion of the privilege."* **Garner v. U.S.,** *96 S. Ct. 1178.*

Juries have recognized Fifth Amendment privilege relative to IRS Form 1040. The most recent Fifth Amendment case I know of is U.S. v. Riely, of Arizona, before Chief Judge William E. Copple, June 21, 1979. Before this was the Reitz case in California and the Drexler case in Minnesota, to mention three. I would have won my case also if there had been any way to have the assistance of counsel in presenting the case to the jury and even a token fairness in the trial. There was no possibility of doing this in Judge Willis Ritter's Court.

POINT VI

The verdict cannot be maintained because Judge Ritter denied my right, (Sixth Amendment), ". . . to have compulsory process for obtaining witnesses in his favor . . ."

The Tenth Circuit refused to hear or rule on this point.

Judge Ritter appointed Attorney Hansen to try the case. The case was on trial within about 15 minutes, which was the total preparation time. All that time was spent looking at **Garner v. U.S.** *There never was any opportunity to even discuss witnesses with Hansen. There never was any opportunity to subpoena witnesses. I don't know how to initiate "compulsory process" and do not know how to use witnesses effectively in a trial. Hansen was preoccupied (and unavailable) with some important which Ritter required him to*

abandon at the time. I think it was a murder case in Carbon County. Can you imagine a federal judge pulling a lawyer off a murder case, forcing him on this case, preventing any reasonable preparation so that I could be railroaded through the Ritter Court on a misdemeanor information already a year old??? It must have been important for IRS to "get" me.

I found out after the trial was over that IRS Agent Sherman Schocket would have been a key defense witness because he was the IRS officer who received IRS Form 3949. He would have provided three essential defense elements: (1) The case was assigned to **criminal** *investigation invalidating IRS summons. (2) His testimony would have revealed who and why the form was initiated contrary to IRS regulations and provided testimony as to the intent of IRS. (3) IRS would have to admit that they violated their own procedure because of the* **civil** *nature of failure to file. The IRS manual states that failure to file is a matter for the collection division and is handled on Form 3449, while fraud is handled on Form 3949. I was not charged with fraud. I was charged with failure to file. No, this was not an innocent error, the IRS had to get me and they probably knew in advance that they could prevent due process with the present situation in the Tenth Circuit.*

I wanted several other witnesses, but then tax cases are not allowed due process. You can see how inadequate the record and the trial were.

POINT VII

The conviction cannot be maintained because of the violation of the "speedy trial" provisions of the Constitution. (6th Amendment)

I know that the Supreme Court will not review this tax case, so I enter this argument to show the prejudice, lying, and irresponsibility of those bringing the charges, hearing, and prosecuting the case. Case law is extremely vague, and the circuits are unsupervised and in disarray in violation of Art. IV, Sec. 2, Cl. 1 in equal protection of the law. Congress has defined "speedy trial", but the Tenth Circuit says there is no such thing.

The time lapse between arraignment and calling of the calendar was about 326 days. The Speedy Trial Act set the statutory time limit at 120 days as it applies to this case.

During the hearing to dismiss on the subject in June, 1977, the U.S. Attorney said they had not exceeded the time limit very far. They had gone over the limit close to 300 percent. Not very far???

Government delays and no preparation time robbed me of an essential witness, Sherman Schocket.

When the Justice Department was trying to remove Judge Willis Ritter from the bench, they specifically stated that my rights to a

speedy trial had been violated. But when I asked on appeal that the case be dismissed, as the law required, the Justice Department argued that it was virtually impossible to violate the right to speedy trial. The government either brought false charges against Ritter, or they are lying in my case. Which is it?

The Tenth Circuit also believes it is impossible to violate speedy trial.

One of the most interesting areas of complicity was in the Tenth Circuit's decision itself.

Twice the Tenth Circuit said the record was unclear as to the cause of delays in the trial, and twice in the same decision they stated that the delays were **not** *caused by the prosecution. How did the Tenth Circuit know, since the record is the source of their information and it is unclear? All the delay was the responsibility of the government, from arraignment until June of 1977. I was not the cause of any delay during that time. The Tenth Circuit twists words to obviate my constitutional rights. Publishing open prejudice can suggest only a certainty of* **non-review** *from on high. It is sad that prejudice carries the weight of law and nothing can be done about it.*

POINT VIII

The verdict cannot be maintained because the government denied my right to appeal. (5th Amendment)

The right to appeals depends upon an adequate record. Judge Ritter prevented my efforts to provide an adequate record for appeal. There is no adequate record for appeal. This is common practice in Judge Ritter's court, that is if you can believe the Justice Department, which has lied so many times in this case. They so charged Ritter in U.S. v. Ritter, Tenth Circuit No. 77-1829.

CONCLUSION

Petitioner petitions the Supreme Court for Writ of Certiorari or other writ as pleases the Court. Petitioner petitions the Court for Law and Justice, equal application and protection of the law, and Redress of Grievances. Petitioner petitions the Court and respectfully demands that the Supreme Court protect my constitutional rights guaranteed and absolute under the mandate of the United States Constitution. Lower decisions are not in harmony with the

Constitution nor my rights as a citizen of the United States of America.

Respectfully submitted,

L. SHYRL BROWN
490 North First West
Richfield, Utah 84701
Petitioner, Pro Se

CERTIFICATE OF MAILING

I certify that 3 copies of this Petition were mailed to the Solicitor General, Department of Justice, Washington, D.C. 20530, on the 31 day of August, 1979.

L. SHYRL BROWN

APPENDIX A

No. 77-1761

UNITED STATES OF AMERICA,	)	*Appeal from the United*
Plaintiff, Appellee,	)	*States District Court for*
vs	)	*the District of Utah, Cen-*
L. SHYRL BROWN,	)	*tral Division (D.C. No. 76-48)*
Defendant-Appellant.	)	

Submitted on Briefs.

Ronald Rencher, United States Attorney, and Max Wheeler, AUSA, Salt Lake City, Utah, for the Plaintiff-Appellee.

L. Shyrl Brown, Pro Se, for Defendant-Appellant.

Before BARRETT, DOYLE AND MCKAY, Circuit Judges

DOYLE, Circuit Judge.

Affirmed.

APPENDIX B

U.S. v. Brown, July 18, 1979, No 77-1761.

The Court treats these petitions as a petition for rehearing and a motion to stay issuance of the mandate.

Upon consideration whereof, the motions are denied.

APPENDIX C

U.S. v. Brown, July 31, 1979, No 77-1761.

The mandate shall be stayed until August 30, 1979, pending certiorari...

There will be no further stays granted.

APPENDIX D

Letter from the Clerk of the Court - Tenth Circuit, August 7, 1979, Re: No. 77-1761, U.S. v. Brown

We are returning to you the motion for rehearing... which was submitted on August 6, 1979. This motion is returned to you for the reason the Court stated in its order of July 31, 1979, it would grant no further delays.

APPENDIX E

There were no hearings or decisions by the Internal Revenue Service. The issue was raised and IGNORED in both the trial court and the Tenth Circuit.

The government advised us at oral argument that a claim of privilege would stimulate rulings by the Service. It is doubtful, therefore, that a claimant would find himself prosecuted with not prior indication that the Service considered his claim invalid. GARNER v. U.S., 96 S. Ct. 1178, at footnote 19.

I certify I mailed 3 corrected copies of this peition to the Solicitor General 9/13/79